

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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JUN 27 2012  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0141-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
GEOFFREY PAUL GAGNON,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007114875001DT

Honorable George H. Foster, Jr., Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney  
By Catherine Leisch

Phoenix  
Attorneys for Respondent

Geoffrey Paul Gagnon

Douglas  
In Propria Persona

K E L L Y, Judge.

¶1 After a jury trial, petitioner Geoffrey Gagnon was convicted of transportation of a dangerous drug. We affirmed the conviction and sentence on appeal.

*State v. Gagnon*, No. 1 CA-CR 2008-0278, ¶ 14 (memorandum decision filed June 25,

2009). Gagnon then filed a petition for post-conviction relief, pursuant to Rule 32, Ariz. R. Crim. P., claiming the admission at trial of his statements and confession violated his right to due process because police officers did not electronically record them. The trial court summarily dismissed the petition for post-conviction relief, and Gagnon filed a petition for review. We will not disturb the court's ruling unless it clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Relying on *State v. Jones*, 203 Ariz. 1, 49 P.3d 273 (2002), Gagnon asserts the trial court erred in summarily dismissing his petition because a recording of his statements and confession “would provide the ‘best evidence’ of a voluntary statement.” Although our supreme court stated in *Jones* that “[r]ecording the entire interrogation process provides the best evidence available” of the voluntariness of a defendant's statement, it concluded that the admission of an unrecorded statement is within the discretion of the trial court. 203 Ariz. 1, ¶¶ 18-19, 49 P.3d at 279. Gagnon acknowledges this but nevertheless argues we “should hold that the [C]onstitution requires the recording of interrogations.”

¶3 However, as the state points out, Gagnon did not raise this claim on direct appeal. *See Gagnon*, No. 1 CA-CR 2008-0278, ¶ 1. Rule 32.2(a)(3), Ariz. R. Crim. P., precludes a defendant from obtaining post-conviction relief based upon any ground that “has been waived at trial, on appeal, or in any previous collateral proceeding.” Gagnon acknowledges the state's argument that his claim is precluded, but he fails to cite any authority that would except this claim from the rule of preclusion. *See Ariz. R. Crim. P.*

32.2(b); *State v. Shrum*, 220 Ariz. 115, ¶ 13, 203 P.3d 1175, 1178 (2009) (“Because the general rule of preclusion serves important societal interests, Rule 32 recognizes few exceptions.”). Gagnon’s claim for relief could have been raised on direct appeal, and he therefore is precluded from raising it in post-conviction proceedings. Accordingly, although we grant review, relief is denied.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge